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ARTICLE

ALWAYS A BRIDESMAID? UNVEILING CALIFORNIA'S
DOMESTIC PARTNER LAWS, INCLUDING THEIR IMPACT
ON REAL PROPERTY

Karen R. Turk*



I. INTRODUCTION

According to a recent *New York Times* article, 2005 marked the beginning of a new minority in this country: *married couples*. After years of decline, couples living in wedded bliss now comprise only 49.7% of the nation's 111.1 million households.¹ With dwindling numbers, one might think that propo-

nents of marriage would seek alternate sources of recruitment. For example, allowing gays and lesbians to marry would boost the statistics. It turns out, however, that while less and less people are getting married, lively debate abounds as to who should and should not be allowed this right. In line with other states, California currently defines marriage as a union between a man and a woman.² In what is sure not to be the last word on the issue of same-sex marriages, the Court of Appeal for the First District re-

* Karen R. Turk is an associate of Miller, Starr & Regalia, and associate editor of Miller & Starr, California Real Estate.

cently held in *In re Marriage Cases* that this opposite gender requirement is constitutional.³

While this article discusses the recent *In re Marriage Cases*,⁴ we leave the debate concerning whether same-sex couples should be allowed to marry to others. Instead, this article focuses on the vehicle now available to gays and lesbians wishing to live in a committed relationship recognized by the state—namely, registering as domestic partners with the California Secretary of State.⁵ In addition to giving a brief overview of the development of domestic partner laws in California, we will catalogue the similarities to marriage, as well as examine the permutations of this relatively new institution. As detailed below, the impact of the domestic partner laws will be significant, especially with respect to community property ownership and the full faith and credit issue in states that have no such domestic partner laws.

II. CALIFORNIA'S DOMESTIC PARTNER LAW

A. Laying The Groundwork⁶

It was only a few years ago that United States Supreme Court precedent allowed states to *criminalize* intimate homosexual conduct.⁷ While this battle over sodomy laws was still being fought in other states, in California the groundwork for the current domestic partner laws was being laid. 1999 marked the first year that this state created a mechanism for registry as domestic partners, as well as procedures for termination of the relationship, with the passage of Assembly Bill 26.⁸

Amendments to California's domestic partner laws were made in 2001⁹ and then again in 2002¹⁰ before enactment of the expansive Domestic Partner Rights and Responsibilities Act of 2003. Some of these additions to domestic partner rights for *registered* domestic partners as a result of the 2001 amendments included: (1) allowing domestic partners to sue for wrongful death; (2) opening up stepparent adoption procedures to domestic partners; (3) preventing the disqualification for unemployment benefits of employees who terminate employment to relocate with a domestic partner; (4) granting domestic partner rights in the creation of conservatorships; and (5) allowing domestic partners to use sick leave to care for an ailing partner (or their child).¹¹

The 2002 amendments to domestic partner law included, among other things, giving domestic partners the same rights as spouses under the laws of intestate succession as to separate property,¹² and allowing one domestic partner to bequeath property to his or her domestic partner even though the latter drafted the will.¹³

B. The Domestic Partner Rights And Responsibilities Act Of 2003

Effective January 1, 2005,¹⁴ the Domestic Partner Rights and Responsibilities Act of 2003 extends broad rights to lesbians, gays, and qualifying heterosexual couples who register as domestic partners with the Secretary

of State. While earlier amendments to domestic partner law *added* new rights, the 2003 Act took a different approach. Instead it provides, with qualifications, that domestic partners have the same rights as spouses. Among other things, § 297.5 was added to the Family Code, which provides in pertinent part that:

Registered domestic partners shall have the *same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties* under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, *as are granted to and imposed upon spouses*. [Emphasis added.]

From this broad language, the courts are sure to be busy for many years to come interpreting the similarities and differences between marriage and domestic partnership.

C. Ever-Changing Domestic Partner Laws

The sweeping 2003 legislation (effective 2005) is not the last word on the evolution of domestic partner rights and protections in this state. On September 30, 2006, the Governor signed into law Senate Bill 1827. Among other things, registered domestic partners must now file their California state tax returns as either married filing jointly or married filing separately for the 2007 tax year.¹⁵ As detailed later, the change in California law does *not* change federal law. Thus, registered domestic partners must continue to file as single or head of household on their federal tax returns. As reported by one major publication:

The discrepancy in filing status will create many thorny issues that have yet to be resolved, such as whether one partner's capital losses can offset the other's capital gains for state taxes.

Partners who file jointly also will become potentially liable for each other's state tax debts¹⁶

With the increased confusion caused by the different filing requirements in California versus the federal level, accountants will certainly benefit from the increased business.

III. CALIFORNIA'S DOMESTIC PARTNER LAWS DISSECTED

A. Who Can Register As A Domestic Partner And Requirements

Domestic partners may be persons of the same sex, or members of the opposite sex. However, in order for members of the opposite sex to register as domestic partners, one of them must be at least 62 years old, and one or both persons must meet specified Social Security Act eligibility requirements and other eligibility requirements.¹⁷ A valid domestic partnership is established in California when both persons submit a Declaration

of Domestic Partnership with the Secretary of State (and pay a filing fee) if certain criteria are met. These prerequisites include:¹⁸

- (1) both persons have a common residence;¹⁹
- (2) neither person is married to someone else or is a member of another domestic partnership with someone else;
- (3) the two persons are not related by blood;
- (4) both persons are at least 18 years of age; and
- (5) both persons are capable of consenting.

Absent from the list of prerequisites is any state residency requirement. Upon registration, the Secretary of State must provide the partners with a copy of the registered declaration and a Certificate of Registered Domestic Partnership.²⁰

Whether *other states* will recognize the validity of domestic partnership registration in California remains an open question. This state will, however, recognize validly created domestic partnerships from other jurisdictions (even if it is not called a domestic partnership) as long as they are substantially equivalent.²¹ Also, according to information provided on the Secretary of State's Domestic Partner Registry,²² a couple who *marries* in another state or country can still register in California as domestic partners. This is so because California currently does *not* recognize homosexual marriages.²³

B. Similarities To Marriage

There is no question that significant rights and obligations accrue to lesbians and gay men (as well as qualifying heterosexual couples) who register as domestic partners, which are similar to those of married couples. Some of these benefits include: (1) community property rights (e.g., in the event of divorce or death of a partner);²⁴ (2) child rearing and support obligations;²⁵ (3) ability to file wrongful death suits;²⁶ (4) ability to make healthcare decisions;²⁷ and (5) same rights regarding nondiscrimination as those provided to spouses.²⁸ Furthermore, if registered domestic partners wish to dissolve their union and don't qualify²⁹ for a simplified procedure enabling them to file a Notice of Termination of Domestic Partnership with the Secretary of State, the dissolution must follow the same procedures as apply to dissolution of marriage.³⁰

Registered domestic partners have also discovered that they cannot have it both ways. For example, in a recent bankruptcy case, the court rejected an attempt by a couple registered as domestic partners to receive *two* homestead exemptions. The court explained that, *just as with married couples*, they were only entitled to one exemption.³¹

C. Differences From Marriage

As already noted, the procedures for entering into a domestic partnership³² are not the same as marriage.³³ Additionally, an abbreviated

method of dissolving the domestic partnership exists under specified conditions (e.g., registered for less than 5 years, no children of the domestic partnership, etc.).³⁴

The most significant difference between marriage and domestic partnership concerns the unavailability of *federal* protections and rights.³⁵ As recently pointed out in *Knight v. Superior Court*, federal benefits available to married couples that are not available to registered domestic partners include Social Security, Medicare, federal housing, food stamps, veterans' benefits, military benefits, and federal unemployment benefit laws.³⁶ The *Knight* court further highlighted the differences between the two institutions by observing that:

Persons under the age of 18 who wish to marry may do so with parental consent (§ 302); however, there is no similar provision for minors to register as domestic partners. In addition, homosexuals must share a common residence before they can register as domestic partners (§ 297, subd. (b)(1)), but there is no similar limitation for persons who wish to marry.³⁷

Also, while immigration laws currently allow for the legal immigration of a spouse, no homosexual couple, registered or otherwise, has such a right.

Another area of contrast in treatment of registered domestic partners versus married couples pertains to federal *income taxes*. Again, differences exist because registered domestic partnerships are not recognized by the federal government. One major drawback which arises in the context of dissolution concerns the federal tax treatment of spousal support payments. According to one recent article on this issue:

[a] California judge might order one [former partner] to regularly pay the other...alimony. But, because the federal government does not recognize same-sex couples, the Internal Revenue Code treats that income as a *gift* and taxes it at a higher level than alimony. And, although alimony payments are deductible for straight ex-spouses, someone who has left a same-sex union can't take that deduction.³⁸

The article goes on to highlight issues concerning pensions and retirement accounts.

This list of differences between marriage and a California domestic partnership is by no means complete. As issues and rights are litigated, additional differences (and similarities) will no doubt be further clarified.

D. Rights Of Domestic Partners Before The Effective Date Of The New Act

Prior to its decision concerning the constitutionality of California laws prohibiting same-sex marriages, the Court of Appeal for the First District wrestled with the rights of homosexuals *before* the January 2005 effective date of the Domestic Partner Act in *Velez v. Smith*.³⁹ In this case, a lesbian couple registered as domestic partners with the City and County of San

Francisco before the inception of *state* domestic partner laws. The relationship terminated prior to the effective date of the Act. One of the women attempted to bring a dissolution action into family law court after the relationship ended. The trial court found that the petition for dissolution of the domestic partnership was “without legal basis” and granted the other party’s motion to strike the pleading.

The Court of Appeal for the First District affirmed the trial court. Because the women had *not* registered with the Secretary of State as domestic partners, all of the rights afforded under the Act were not triggered. Accordingly, a separate *civil* action had to be brought. The court reasoned that if *spouses* do not follow specified legal procedures to effectuate a valid marriage, the court has no jurisdictional foundation for a dissolution proceeding. The same should be true for domestic partners.⁴⁰

The court acknowledged that, had the couple registered as domestic partners with the Secretary of State, it would have had no difficulty in *retroactively* applying the new law to their previously existing registered partnership. However, because they never registered with the Secretary of State, the appellant had no vested rights to proceed with the dissolution.⁴¹

The court further held that the appellant could *not* rely on the putative spouse doctrine to achieve standing to proceed with the dissolution. Under this doctrine, an innocent party may be entitled to relief where a *marriage* is invalid due to some legal infirmity. The court reasoned that, even with the recent changes to the law, domestic partners are still not, in all respects, treated the same as spouses. Furthermore, if the legislature wanted to include rights granted to putative spouses, it would have so stated in the Act.⁴²

IV. REAL PROPERTY CONSIDERATIONS

Who of us hasn’t heard a story or two about the epic battles fought over property by divorcing spouses? With the advent of domestic partner laws (including *community property rights*), these stories are sure to grow exponentially. After all, laws governing rights and obligations of spouses have been around for years. For registered domestic partners, the legal recognition of these same rights has only recently been born (or in the context of divorce, should we say *borne*?).

In crafting laws concerning the dissolution of a domestic partnership, legislators recognized the complex issues arising out of real property ownership. One of the *preconditions* for utilizing the simplified procedures for terminating a domestic partnership provides that “neither party has any interest in real property, wherever situated...”⁴³ Thus, couples with an interest in real property (or who don’t satisfy other preconditions) must use the same procedures for dissolving their domestic partnership as a married couple terminating their marriage.

In order to effectuate the intent of the sweeping Domestic Partner Rights and Responsibilities Act,⁴⁴ numerous community property presumptions

governing married persons will logically now need to be applied to registered domestic partners.⁴⁵ For example, Fam. Code § 760 provides in relevant part that "... all property...acquired by a *married person* during the marriage while domiciled in this state is community property." [emphasis added.] Additionally, the real property presumption that property acquired in joint form (e.g., tenancy in common, joint tenancy) during a marriage is community property, which applies to *divorcing spouses*,⁴⁶ now would apply to parties dissolving their domestic partnership.

Property rights issues do not arise solely in the context of divorce. Again, even before the expansive Domestic Property Rights and Responsibilities Act, changes had already been made to the Probate Code to recognize rights of intestate succession by registered domestic partners.⁴⁷ At that time, the change pertained to intestate succession to *separate property*.⁴⁸ Now, of course, the domestic partner laws expressly recognize a registered domestic partner's rights upon death of a partner.⁴⁹ This includes entitlement to an interest in community (and quasi-community) real and personal property upon the death of a registered domestic partner even though the Probate Code does not expressly so provide.⁵⁰

A vast array of rights and responsibilities concerning real property exists during that period between death and dissolution. For example, according to Family Code, § 1102, subd. (a):

...[E]ither *spouse* has the management and control of the community real property,...but both *spouses*, either personally or by a duly authorized agent, must join in executing any instrument by which that community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered. [emphasis added.]

While the words "domestic partner" do not appear in this section, with the recognition of community property rights of domestic partners in California reasonably flows similar management rights and joint execution obligations (e.g., the joint execution of conveyancing documents by both registered domestic partners upon the conveyance of real property, or a quitclaim deed disclaiming interest, when applicable).

For the last decade, one of the lynchpins of real property *federal* tax breaks for married couples pertaining to real property includes the exclusion of \$500,000 of capital gains from the sale of the principal residence.⁵¹ In order to qualify for the \$500,000 exclusion (\$250,000 for single people), only one spouse has to own the property, but both spouses must meet the specified use requirement. Because domestic partnerships are not recognized by the federal government, this *additional* \$250,000 capital gains exclusion is unavailable where only one of the domestic partners owns the property.

In terms of *California* real property taxes, beginning with the lien date for the 2006-07 fiscal year, the Tax Code has been changed to exclude

transfers between registered domestic partners from the definition of “change of ownership.”⁵² In other words, just as with married couples, domestic partner recipients of real property will not be subjected to tax re-assessment upon transfer of the property. This new law impacts, *inter alia*, transfers creating or terminating any co-owners’ interests, transfers pursuant to a property settlement or domestic partner dissolution, transfers upon death, etc.⁵³

With regard to *how* domestic partners hold title to real property, the relatively new form of holding title available to spouses, *community property with right of survivorship*, would not benefit domestic partners. According to Civ. Code, § 682.1, subd. (a):

Community property of a *husband and wife*, when expressly declared in the transfer document to be community property with right of survivorship, and which may be accepted in writing on the face of the document by a statement signed or initialed by the grantees, shall, upon the death of one of the spouses, pass to the survivor, without administration, pursuant to the terms of the instrument, subject to the same procedures, as property held in joint tenancy. [Emphasis added.]

While it is true that this section makes no mention of domestic partners, the intended *purpose* of this new form of holding title makes this an unrealistic vehicle for registered domestic partners. For married couples, community property with right of survivorship combines the benefits of holding property as joint tenants (avoids probate) with that of holding title as community property (step-up in basis of the entire property when one spouse dies). Of course, a step-up in basis of the entire property upon the death of one spouse is for *federal* tax purposes. Because the federal government does not recognize gay marriage, there could be no step-up in basis of the entire property.

The list of real and personal property issues arising out of the new domestic partner laws will, no doubt, continue to grow. With all this uncertainty and risk, some gay and lesbian couples desiring to register as domestic partners may want to enter into “premarital” agreements to resolve, in advance of registration, many of these property issues.

V. LEGAL CHALLENGES

Legal challenges have been made both by marriage purists seeking to overturn the California’s domestic partner laws, as well as those persons seeking to overcome prohibitions on same-sex marriage.

A. Challenge To The Domestic Partner Act

In 2000, the voters of California passed the “Defense of Marriage” initiative, which enacted Family Code, § 308.5. This section provides that “only marriage between a man and a woman is valid or recognized in California.”

In 2003, the Legislature *amended* existing domestic partnership laws via the California Domestic Partner Rights and Responsibilities Act, giving registered domestic partners rights as broad as those granted to spouses. Proponents of the defense of marriage initiative filed a complaint for declaratory and injunctive relief, seeking a determination that the legislature's enactment of the Act was void because it amended the defense of marriage initiative without obtaining separate approval of the voters. The trial court held that the Act did not amend the defense of marriage initiative.

The court of appeal affirmed, concluding that the Legislature had *not* created a "marriage" by another name, nor grant domestic partners a status equivalent to married spouses. The court catalogued the numerous differences between marriage and domestic partnership. The court also expressed that if the voters had intended that domestic partnerships be banned in California, then the initiative should have so stated.⁵⁴

B. Constitutional Challenge To The Prohibition Of Same-Sex-Marriage

1. The Pre-Show: Constitutional Challenge

With the California Supreme Court stepping in after Mayor Gavin Newsom instructed the San Francisco County Clerk to design a gender neutral application for public marriage licenses, some may be under the false impression that California's highest court has already addressed the issue of the constitutionality of same-sex marriage. After all, over 4,000 marriage licenses were issued to same-sex couples as a result of the altered official forms in violation of current law defining marriage as a union between a man and a woman. However, the Court went out of its way to "emphasize that the substantive question of the constitutional validity of California's statutory provisions limiting marriage to a union between a man and a woman is not before...[the] court."⁵⁵ Instead, the Court focused on the narrow issues surrounding whether local officials exceeded their authority by taking official action in violation of applicable statutory provisions, and answered in the affirmative. This set the stage for the consolidated *In re Marriage Cases*.⁵⁶

2. The Latest Word (But Likely Not The Last): Constitutional Challenge

In the recent *In re Marriage Cases*, after exhaustively analyzing why same-sex marriages are *not* a fundamental right, and the prohibition of them does not discriminate against a suspect class, the Court of Appeal for the First District held that, as analyzed under a rational basis test, the opposite sex prerequisite to marriage is constitutional.⁵⁷

Had the court concluded that a fundamental right or a suspect class was implicated, it would have had to apply a heightened level of scrutiny to California's ban on same-sex marriage. In terms of fundamental rights, the court walked the thin line between acknowledging that marriage *is* a fundamental right (e.g., even prison inmates have a right to marry⁵⁸), as rec-

ognized by the United States Supreme Court, but finding that the right to same-sex marriage is not. The foundation for the court's conclusion was the court's focus on how the marriage has *traditionally* been understood as between a man and a woman, and that there is no precedent recognizing this altered type of marital union. The court found "flawed" an analogy between laws banning interracial marriages⁵⁹ and the laws in this case. The court expressed, *inter alia*, that the central holdings of the operative miscegenation cases focused on *race*—not marriage.⁶⁰

In determining that a heightened level of scrutiny was not warranted, the court further concluded that laws prohibiting gay marriage do not discriminate based on gender, and that disparate impact on gays and lesbians did *not* trigger strict scrutiny. Furthermore, the court found that the marriage laws in question did not infringe upon other asserted constitutional rights (e.g., privacy/intimate association or the right of free expression). Thus, applying a rational basis review, the court held as follows:

Under the highly deferential standard of review that applies, we believe it is rational for the Legislature to preserve the opposite-sex definition of marriage, which has existed throughout history and which continues to represent the common understanding of marriage in most other countries and states of our union, while at the same time providing equal rights and benefits to same-sex partners through a comprehensive domestic partnership system. The state may legitimately support these parallel institutions while also acknowledging their differences.⁶¹

The court further held that the state's interest in carrying out the will of its citizens, as expressed in California's Proposition 22⁶² was *also* legitimate. In the 2-1 opinion, the court expressed on more than one occasion that the issue of gay marriage should be addressed by the legislature and *not* the courts. According to the court, "[i]n the final analysis, the court is not in the business of defining marriage."⁶³

Whatever the outcome of this case at the California Supreme Court level, with the *federal* Defense of Marriage Act ("DMA")⁶⁴ in place, there is no assurance that a California gay marriage would be recognized in another state. The DMA, overwhelmingly passed by Congress and signed into law by Bill Clinton in 1996,⁶⁵ provides in pertinent part that:

No State...shall be required to give effect to any public act, record, or judicial proceeding of any other State...respecting a relationship between persons of the same-sex that is treated as a marriage under the laws of such other State...or claim arising from such relationship.⁶⁶

In a 2004 speech concerning the DMA, President Bush expressed the following:

[T]here is no assurance that the Defense of Marriage Act will not, itself, be struck down by activist courts. In that event, every state would be forced to recognize any relationship that judges in Boston or officials in San Francisco choose to call a marriage. Furthermore, even if the Defense of Marriage Act is upheld, the law does not protect marriage within any state or city.

For all these reasons, the Defense of Marriage requires a constitutional amendment.⁶⁷

So far, a federal marriage amendment to the United States Constitution, which would define marriage in the United States as a union between a man and a woman, has failed to pass Congress,⁶⁸ but with recent cases throughout the country, it is sure to gather traction. Meanwhile, New Jersey's highest court recently held that gay couples are entitled to the same rights as heterosexual couples.⁶⁹ The Court stopped short of fully approving gay marriage, giving lawmakers 180 days to rewrite marriage laws to either include gay couples or create new civil unions.

VI. OTHER STATES

Currently, Massachusetts is the only state that allows same-sex couples to marry (as opposed to civil unions or domestic partnerships).⁷⁰ According to one recent newspaper article published the day after the November 2006 elections, the trend is to *ban* same-sex marriages. With voters in seven states approving such bans in the elections, same-sex marriages are now *prohibited* in a majority of states in the country. Some even ban *domestic partnerships*.⁷¹

Vermont⁷² and Connecticut⁷³ recognize civil unions⁷⁴ entered into by gays and lesbians, while other states have enacted domestic partner laws with lesser state protections than marriage (e.g., Rhode Island, New Jersey, Hawaii, New Mexico, Iowa, Illinois, New York, Maine and the District of Columbia).⁷⁵

Again, California will only recognize validly created domestic partnerships from other jurisdictions if they are *substantially equivalent* to that of this state, even if called another name (e.g., a civil union in Vermont).⁷⁶ No doubt, the meaning of substantial equivalence will at some point be fodder for the courts. With a number of states not recognizing marriage or domestic partnerships by same-sex couples, combined with the Defense of Marriage Act (states not required to recognize same-sex marriages), just how many *rights* registered domestic partners possess upon leaving this state, remains an open question.

VII. CONCLUSION

Since 2000, over 39,000 couples have registered with the California Secretary of State as domestic partners.⁷⁷ With inevitable increases over the years, the likelihood that an attorney (or accountant) will have clients who

have domestic partner issues or concerns will likewise multiply. With registered domestic partners having hybrid rights to that of marriage (e.g., community property rights, but no federal rights and possibly problems having the relationship recognized in other states), a prudent attorney would be wise to keep abreast of the ever-changing domestic partner laws—and then refer prospective clients to an attorney who specializes in that area.⁷⁸

NOTES

1. Roberts, *To Be Married Means to be Outnumbered*, New York Times, October 16, 2006.
2. Proposition 22, passed by California voters in 2000 added § 308.5 to the Family Code to provide that “[o]nly marriage between a man and a woman is valid or recognized in California.” See also, Fam. Code, § 308, defining marriage.
3. *In re Marriage Cases*, 143 Cal. App. 4th 873, 49 Cal. Rptr. 3d 675 (1st Dist. 2006), as modified on denial of reh’g, (Nov. 6, 2006) and review filed, (Nov. 13, 2006) and review filed, (Nov. 14, 2006).
4. *In re Marriage Cases*, 143 Cal. App. 4th 873, 49 Cal. Rptr. 3d 675 (1st Dist. 2006), as modified on denial of reh’g, (Nov. 6, 2006) and review filed, (Nov. 13, 2006) and review filed, (Nov. 14, 2006).
5. Fam. Code, §§ 297 et seq.
6. See <http://www.answers.com/topic/domestic-partnerships-in-california> for more detailed information concerning the development of laws concerning domestic partnership.
7. See *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003), overruling *Bowers v. Hardwick*, 478 U.S. 186, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986) (overruled by, *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003)).
8. *Comment*: Places like San Francisco had already established a mechanism for domestic partner registration with the *City and County* well before the passage of AB 26 (Stats. 1999, Ch. 588). However, as illustrated in *Velez v. Smith*, 142 Cal. App. 4th 1154, 48 Cal. Rptr. 3d 642 (1st Dist. 2006), review denied, (Nov. 29, 2006), these registrations had no legal effect as to state rights and responsibilities.
9. Assembly Bill 25 (Stats. 2001, Ch. 893) and Senate Bill 1049 (Stats. 2001, Ch. 146).
10. Assembly Bill 2216 (Stats. 2002, Ch. 447), Assembly Bill 2777 (Stats. 2002, Ch. 373), Senate Bill 1575 (Stats. 2002, Ch. 412) and Senate Bill 1661 (Stats. 2002, Ch. 901).
11. Additional expanded rights extended to registered domestic partners as a result of passage of AB 25, include: (1) expanding insurance rights for domestic partners; (2) including domestic partner in the state statutory will form; (3) providing that the termination of a domestic partnership would revoke a bequest of property in a will to a former domestic partner; (4) providing for certain health care related tax deductions to be made available to domestic partners; and (5) allowing domestic partners to make disability benefits claims on behalf of a partner who is mentally unable to do so.
12. Assembly Bill 2216 (Stats. 2002, Ch. 447).
13. Senate Bill 1575 (Stats. 2002, Ch. 412).
14. Fam. Code, § 297.5.
15. Rev. & Tax. Code, § 18521. See also Rev. & Tax. Code, § 17024.5, subd. (h)(2).
16. Pender, *New domestic partner law throws wrench into taxes*, San Francisco Chronicle, October 8, 2006.
17. Fam. Code, § 297.
18. Fam. Code, § 297.
19. Fam. Code, § 297, subd. (c) defines “common residence” as follows: “both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence

- even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.”
20. Fam. Code, § 298.5, subd. (b).
 21. Fam. Code, § 299.2.
 22. <http://www.ss.ca.gov/dpreistry/index.htm> (Frequently Asked Questions section).
 23. See Fam. Code, § 308.5, which provides that “Only a marriage between a man and a woman is valid or recognized in California.” See also, *In re Marriage Cases*, 143 Cal. App. 4th 873, 49 Cal. Rptr. 3d 675 (1st Dist. 2006), as modified on denial of reh’g, (Nov. 6, 2006) and review filed, (Nov. 13, 2006) and review filed, (Nov. 14, 2006).
 24. See Fam. Code, § 297.5, subds. (c), (k)(1). See also Prob. Code, § 6401 concerning intestate succession.
 25. See Fam. Code, § 297.5, subd. (d). See also Fam. Code, § 9000 et seq. concerning step-parent adoption procedures.
 26. Code Civ. Proc., § 377.60. See also Civ. Code, § 1414.01, allowing domestic partners the right to recover damages for negligent infliction of emotional distress to the same degree as spouses.
 27. See, e.g., Prob. Code, §§ 1820 et seq. (conservatorship).
 28. Fam. Code, § 297.5, subd. (f).
 29. E.g., the domestic partnership must be less than five years in duration, no children of the relationship, and neither party has an interest in real property, etc. See Fam. Code § 299.
 30. Fam. Code, § 299, subd. (d).
 31. *In re Rabin*, 336 B.R. 459 (Bankr. N.D. Cal. 2005).
 32. By registering with the California Secretary of State if specified qualifying conditions exist.
 33. Fam. Code, § 297.
 34. Fam. Code, § 299.
 35. The Act itself acknowledges that it does “not amend or modify federal laws or the benefits, protections, and responsibilities provided by those laws.” Fam. Code, § 297.5, subd. (k).
 36. *Knight v. Superior Court*, 128 Cal. App. 4th 14, 21, 26 Cal. Rptr. 3d 687 (3d Dist. 2005), review denied, (June 29, 2005).
 37. *Knight v. Superior Court*, 128 Cal. App. 4th 14, 30, 26 Cal. Rptr. 3d 687 (3d Dist. 2005), review denied, (June 29, 2005).
 38. Buchanan, *Divorcing Couples Create New Legal Issues*, San Francisco Chronicle, September 25, 2006.
 39. *Velez v. Smith*, 142 Cal. App. 4th 1154, 48 Cal. Rptr. 3d 642 (1st Dist. 2006), review denied, (Nov. 29, 2006).
 40. *Velez v. Smith*, 142 Cal. App. 4th 1154, 1169, 48 Cal. Rptr. 3d 642 (1st Dist. 2006), review denied, (Nov. 29, 2006).
 41. *Velez v. Smith*, 142 Cal. App. 4th 1154, 1169-1172, 48 Cal. Rptr. 3d 642 (1st Dist. 2006), review denied, (Nov. 29, 2006).
 42. *Velez v. Smith*, 142 Cal. App. 4th 1154, 1173-1174, 48 Cal. Rptr. 3d 642 (1st Dist. 2006), review denied, (Nov. 29, 2006).
 43. Fam. Code, § 299, subd. (a)(4). *Comment*: There is a carve-out for leases which terminate within one year from the date of filing the Notice of Termination.
 44. Fam. Code, § 297.5, provides, *inter alia*, that: “(a) Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.”
 45. Fam. Code, § 297.5, subd. (m) provides: “For purposes of the statutes, administrative regulations, court rules, government policies, common law, and any other provision or source of law governing the rights, protections, and benefits, and the responsibilities, obligations, and duties of registered domestic partners in this state, as effectuated by

this section, with respect to *community property*, mutual responsibility for debts to third parties, the right in particular circumstances of either partner to seek financial support from the other following the dissolution of the partnership, and other rights and duties as between the partners concerning ownership of property, any reference to the date of a marriage shall be deemed to refer to the date of registration of a domestic partnership with the state." [Emphasis added.]

46. Fam. Code, § 2581.
47. Assembly Bill 2216 (Stats. 2002, Ch. 447).
48. Prob. Code, § 6401.
49. Fam. Code, § 297.5, subd. (c) provides that "(c) A surviving registered domestic partner, following the death of the other partner, shall have the same rights, protections, and benefits...whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower."
50. Prob. Code, § 6401.
51. Int. Rev. Code, § 121.
52. Rev. & Tax. Code, § 62, subd. (p).
53. Rev. & Tax. Code, § 62, subd. (p).
54. *Knight v. Superior Court*, 128 Cal. App. 4th 14, 26 Cal. Rptr. 3d 687 (3d Dist. 2005), review denied, (June 29, 2005); compare *Armijo v. Miles*, 127 Cal. App. 4th 1405, 1422-1424, 26 Cal. Rptr. 3d 623 (2d Dist. 2005), review denied, (June 15, 2005), which held that Fam. Code, § 308.5 addresses only the extent to which *out of state marriages* will be recognized as valid in California.
55. *Lockyer v. City and County of San Francisco*, 33 Cal. 4th 1055, 1069, 17 Cal. Rptr. 3d 225, 95 P3d 459 (2004).
56. *In re Marriage Cases*, 143 Cal. App. 4th 873, 49 Cal. Rptr. 3d 675 (1st Dist. 2006), as modified on denial of reh'g, (Nov. 6, 2006) and review filed, (Nov. 13, 2006) and review filed, (Nov. 14, 2006).
57. *In re Marriage Cases*, 143 Cal. App. 4th 873, 49 Cal. Rptr. 3d 675 (1st Dist. 2006), as modified on denial of reh'g, (Nov. 6, 2006) and review filed, (Nov. 13, 2006) and review filed, (Nov. 14, 2006). *Comment*: The portion of the case concerning whether certain parties had standing is not summarized herein.
58. *Turner v. Safley*, 482 U.S. 78, 95-96, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987).
59. See *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967).
60. *In re Marriage Cases*, 143 Cal. App. 4th 873, 912, 49 Cal. Rptr. 3d 675 (1st Dist. 2006), as modified on denial of reh'g, (Nov. 6, 2006) and review filed, (Nov. 13, 2006) and review filed, (Nov. 14, 2006).
61. *In re Marriage Cases*, 143 Cal. App. 4th 873, 912, 931, 49 Cal. Rptr. 3d 675 (1st Dist. 2006), as modified on denial of reh'g, (Nov. 6, 2006) and review filed, (Nov. 13, 2006) and review filed, (Nov. 14, 2006).
62. Pursuant to Prop. 22, only marriages between a man and a woman will be recognized in this state.
63. *In re Marriage Cases*, 143 Cal. App. 4th 873, 912, 937-938, 49 Cal. Rptr. 3d 675 (1st Dist. 2006), as modified on denial of reh'g, (Nov. 6, 2006) and review filed, (Nov. 13, 2006) and review filed, (Nov. 14, 2006).
64. 28 U.S.C. § 1738c.
65. The catalyst for the passage of the DMA was the 1993 Hawaii Supreme Court case in which the Court held that Hawaii had to show a compelling interest in prohibiting same-sex marriage. *Baehr v. Lewin*, 74 Haw. 645 (1993).
66. 28 U.S.C. § 1738c.
67. February 24, 2004 Press Conference. See <http://www.whitehouse.gov/news/releases/2004/02/20040224-2.html>.
68. <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:b.j.res.00056>.
69. *Lewis v. Harris*, 188 N.J. 415, 908 A.2d 196 (2006).
70. *Goodridge v. Department of Public Health*, 440 Mass. 309, 798 N.E.2d 941(2003).

71. Buchanan, *Same-Sex Marriage: 7 states ok ban—but it trails in Arizona*, San Francisco Chronicle, November 8, 2006.
72. Pursuant to Vermont Act 91, 2000 Session, “Parties to a civil union shall have all the same benefits, protections and responsibilities under Vermont law, whether they derive from statute, policy, administrative or court rule, common law or any other source of civil law, as are granted to spouses in a marriage.” (For the Vermont Secretary of State’s website, see <http://www.sec.state.vt.us/otherprg/civilunions/civilunions.html>).
73. Pursuant to Connecticut Public Act 05-10 § 14, (*Effective October 1, 2005*), “Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman.” (For the Connecticut Secretary of State’s website, see http://www.dpb.state.ct.us/PB/HISR/VR_FAOs.html.)
74. A Civil Union is a legal mechanism, sanctioned by civil authority, intended to grant same-gender couples legal status somewhat similar to civil marriage. Under this model, same-gender couples are granted the same state-level rights as those granted to heterosexual married couples.
75. For *general information* concerning a particular state, the Human Rights Campaign, an organization whose mission is to work for lesbian, gay, bisexual and transgender rights, tracks the laws and pending legislation in every state. http://www.brc.org/Template.cfm?Section=Your_Community&Template=/ContentManagement/ContentDisplay.cfm&ContentID=8471. *Comment*: While the information appears comprehensive, there is no indication on the website as to how frequently it is updated.
76. Fam. Code, § 299.2.
77. Buchanan, *Divorcing Couples Create New Legal Issues*, San Francisco Chronicle, September 25, 2006.
78. **Disclaimer**: This article is intended as an overview of domestic partner laws. It does not purport to provide legal advice.

